

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NORTH CAROLINA  
WESTERN DIVISION  
No. 5:16-CV-410-BO

UNITED STATES OF AMERICA and )  
THE STATE OF NORTH CAROLINA, )  
EX REL. STEPHEN GUGENHEIM, )  
 )  
Plaintiff, )  
 )  
v. )  
 )  
MERIDIAN SENIOR LIVING, LLC, *et al.*, )  
 )  
Defendants. )

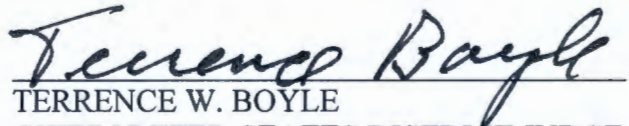
ORDER

This cause comes before the Court on relator's motion to stay deadline to respond to defendant's application for costs and motion for attorney fees pending relator's appeal. [DE 188]. Defendants oppose the motion to stay.

If an appeal of the merits of an action is taken and a motion for attorney fees is pending, a district court may rule on the motion for attorney fees, defer its ruling, or deny the motion without prejudice and direct that it be refiled after resolution of the appeal. Fed. R. Civ. P. 54(d) advisory committee's note (1993 amendment); *see also Tancredi v. Metro. Life Ins. Co.*, 378 F.3d 220, 226 (2d Cir. 2004). A district court may prefer to defer consideration of a motion for attorney fees until the appeal has been resolved where the fee claim either involves substantial issues or is likely to be affected by the court of appeals' decision. *Certusview Techs., LLC v. S & N Locating Servs., LLC*, No. 2:13CV346, 2015 WL 3466842, at \*2 (E.D. Va. June 1, 2015) (citing Fed. R. Civ. P. 58 advisory committee's notes (1993 amendments)).

As the judgment in this matter is now before the court of appeals, and the motion for attorney fees may plainly be affected by the appellate court's decision, the Court in its discretion DENIES the motion for attorney fees and application for costs [DE 180 & 181] WITHOUT PREJUDICE to refiling within fourteen days of the resolution of the appeal. Relator's motion to stay [DE 188] is GRANTED IN PART, as any response to the motion for attorney fees or cost application need not be filed until the motion and application are refiled, if appropriate, following entry of the mandate of the court of appeals.

SO ORDERED, this 6 day of July, 2020.

  
TERRENCE W. BOYLE  
CHIEF UNITED STATES DISTRICT JUDGE